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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th May 2007

No. 7415—li/1(SS)-83/2001 (pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th April 2007 in Industrial Dispute Case No. 72 of 2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of M/s O.C.L. India Ltd., Rajgangpur through its Executive Director, Dist. Sundargarh and their workman Shri Gokul Das, represented through the General Secretary, Gangpur Shramik Sangha, Rajgangpur, Dist. Sundargarh was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 72 OF 2002

Dated the 4th April 2007

Present :

Shri P. K. Mahapatro, LL. B.
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of M/s O. C. L. India Ltd. . . First Party—Management
Rajgangpur, through its Executive Director,
Dist. Sundargarh.

And

Their Workman . . . Second Party—Workman
Shri Gokul Das,
represented through the General Secretary,
Gangpur Shramik Sangha,
Rajgangpur,
Dist. Sundargarh.

Appearances :

For the First Party—Management	.. Shri G. Pujari, Advocate
For the Second Party—Workman	.. Shri K. C. Ratha, Advocate

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 & 12 of the Industrial Disputes Act, 1947 vide memo No. 8460(5), dated the 13th July 2002 for adjudication of disputes Scheduled below:

"Whether the demand for correction of the age/date of birth of Shri Gokul Das, Ex-Maintenance, Attendant, Kiln Maintenance Department Refractories Works of M/s O. C. L. India Ltd., Rajgangpur is legal and/or justified? If not, to what should be his actual age/date of birth?"

2. The dispute between the parties revolves in a narrow compass. According to the workman, at the time of joining the management his age was 25 years and he disclosed the same before the Office Assistant who had filled up different forms of the company, but during the last week of June, 2000 he could know that his retirement is in the offing and then he was surprised to take note of the same and obtained his transfer certificate wherein his date of birth is recorded as the 5th February 1953 and approached the management to accept it, but without taking note of the same, he was asked to retire with effect from 1st September 2000 at the age of 47 years. It is also the case of the workman that at the time of his entry in service i. e. on 1st September 1977 as a 'Majdoor', he disclosed his age as 25, but the Office Assistant mentioned it as 35 and as he (workman) had no access to the service records maintained by the management so he had no occasion to know about the wrong entry and after a long lapse of time, he could know about it and took attempts to satisfy the management, but nothing fruitful was achieved. According to him, even after filing documentary evidence to buttress his claim the management turned down his claim. To come up, according to the workman his age was wrongly noted at the time of his initial entry and the order of retirement with effect from 1st September 2000 be treated as illegal and his actual date of birth i.e. 5th February 1953 be treated as the guiding factor.

3. The management has filed its written statement wherein the above claim was challenged with the facts that the form of employment (Ext. 1) is the valid document to consider the date of retirement and at the time of his entry his age was 35 years which was also endorsed by the Medical Officer of the Company on 2nd September 1977 by issuing a certificate (Ext. 2). According to the management, the order of retirement w.e.f. 1st September 2000 is justified. In the body of the written statement it is also averred that since in the certified standing order there is no stipulation with regard to the correction of the date of birth, so the workman has no authority or right to make such a representation. To sum up, it is the stand of the management that the claim of the workman is not tenable factually and legally.

4. The workman has filed his rejoinder and in the body of the same, he has averred that prior to his entry under the management, he was serving under a contractor Shri P. I. Bava with effect from 16th July 1972 and before that contractor, he had given his bio-data including the coverage under the E. S. I. Scheme wherein his year of birth is mentioned as 1953. To add to this, the E. P. F. Authority has recorded his date of birth as 1st September 1952 which indicates that at the time of entry under the management, he was 25 years old and in view of the above position there is no reason for him to state before the Office Assistant of the management that he was 35 years old as on 1st September 1977. In the body of the rejoinder it is also averred that the entry of age in the body of Ext. 1 is a wrong entry and the same be ignored and the reference be answered in his favour.

5. By taking note of the pleadings of the parties, the following issues are framed in this case :—

ISSUES

(i) "Whether the demand for correction of the age/date of birth of Shri Gokul Das, Ex-Maintenance Attendant, Kiln Maintenance Department, Refractories Works of M/s O.C.L. India Ltd., Rajgangpur is legal and justified?"

(ii) If so, what should his actual age/date of birth?"

6. During the course of trial the workman is only examined from his side and he has filed identity card issued by the E. S. I. Corporation (Ext. A), letter of P. F. Department (Ext. B), School Leaving Certificate (Ext. C) and letter of confirmation (Ext. D). In turn, the management side has examined Shri Ram Nandan Singh and Tusar Kumar Baren Das as M. W. 1 and 2 respectively. M. M. 1 claims to be an Employee of the management and according to him, he had entered the particulars in the body of Ext. 1 (employment application) of the workman. As it appears M. W. 2 in the present Deputy Manager (Personnel) who is the custodian of the records of the Company to buttress the claim of the management, he M.W. 2 had filed the application of employment of the workman (Ext. 1), medical certificate of the workman (Ext. 2), Adult Register maintained by the management (Ext. 3) and certified standing order of the Company (Ext. 4).

7. *Issue No. (i)*—At the time of argument the learned counsel for the management has raised some technical points with regard to the scope and limitation of the reference. He has given emphasis to the fact that the reference relates to the legality and justifiability of the demand for correction of the age/date of birth of the workman and the same should not be given a pedantic and broad approach. Admittedly, the workman had made a demand for correction of his date of birth, but the same was turned down by the management and he was superannuated with effect from 1st September 2000. In this Court after the reference the workman has challenged the action of the management for retiring him from the above referred date, so the entire challenge of the workman relates to his date of birth. As such while

considering the legality and justifiability of such demand this Court can take judicial note of the entire developments which were holding the field by then and then to assess as to whether the circumstances and facts are congenial to accept the version of the workman or the action taken by the management is justified. To sum up, this court has the jurisdiction to determine the age of the workman at the time of his entry under the management.

8. Admittedly at the time of entry in service, the workman was not aware of reading and writing English language. It is also the admitted case of the parties that his employment application was filled up by an employee of the Company and not by the workman. The workman has deposed that Mr. Singh had filled up the same and the management has examined him as M. W. 1. So now it can be said that M. W. 1 had filled in the particulars of Ext. 1 on the date of the entry of the workman in service. On perusal of the body of the Ext. 1 what emerges is that his date of birth is not mentioned and simply his age is mentioned to be 35 years on the date of entry in service, so far the other entries of Ext. 1 are concerned, it is forthcoming that he (workman) does not know reading and writing any language, but he can speak Hindi and Oriya language. There is no mention about his educational qualification, but in relation to his past experience there is a clear out mention that he was serving under Shri P. I. Bava from 6th July 1972 and was continuing as such till his entry under the management. So from the body of Ext. 1 it is clear that prior to joining the management, he (workman) was serving under the above named contractors. According to the management at the time of his entry, under the management, he told his age to be 35 years. How coming to the medical examination certificate (Ext. 2) it is forthcoming that he was medically examined on 2nd September 1977 and on that day his age was shown to be 35 years. Ext. 2 is not a certificate to determine the age of the workman, but it is a general medical certificate to take note of the medical fitness of the workman. It can be safely said that at the time of appointing the workman no letter of appointment was given to him and even in the confirmation order (Ext. D) which was issued on 1st January 1982 there is no mention about his date of birth and date of retirement. The workman has filed his E. S. I. Identity Card wherein his year of birth is shown as 1953 and the year of birth of his father and mother are shown as 1929 and 1935 respectively. The learned counsel for the workman has given emphasis to the above referred identity card and another letter written by the Assistant Provident Fund Commissioner to the workman (Ext. B) wherein his date of birth in the prescribed form was submitted by the present management to be on 1st September 1952 and subsequently in the claim application his date of birth is shown as 1st September 1942. Exts. A and B are documents which are in existence much prior to the controversy. As per law such documents are relevant to decide the crux of the issue. Admittedly, the School Leaving Certificate was obtained on 6th July 2000 when the controversy had arisen. The workman has not taken the pain of bringing the authority of the concerned school to suffice that the entries were supplied in the discharge of official functions and can be presumed to be true. Ext. C which is the transfer certificate can not be given legal importance to determine the crux of the issue. The management side has relied on Exts. 1 and 2 as referred above and one Adult Register (Ext. 3) wherein his age in Column No. 10 is mentioned to be 35 years which conclude to the stand of the management. But in order to prove the entries of Ext. 3 no material evidence is adduced from the side of the management and it is also not placed that in due discharge of official functions it was maintained. In such situation,

Ext. 3 is also not very relevant to determine the crux of the issue. In view of my above conclusion what emerged is that to determine the crux of the issue the oral evidence of the parties coupled with Exts. 1 and 2 marked from the side of the management and Exts. A and B marked from the side of the workman are to be judicially noted.

9. The learned counsel for the management has relied on a catena of decisions to substantiate his plea. He has also filed a memo of citation. As such, there is no reason to reflect the case laws relied by him in the body of the award. On perusal of the judicial pronouncements relied by him what emerges is that the application for correction of the date of birth if presented belatedly and no explanation for delay is given than the same is a good ground to reject the application for correction. It is also forthcoming from the judicial pronouncement relied by the learned counsel for the management that the burden of proof is heavy on the employee and it can be discharged only by producing acceptable evidence of clinching nature. In the case at hand it is the specific stand of the workman in his statement of claim that he had no access to the service records maintained by the management as a result there is no scope for him to know as to what age/date of birth was recorded by the management in respect of him. It is also his (workman) case that in the last week of June, 2000 when he could know from his superiors that he would retire very shortly, then he was astonished as to how he would face it so early and then obtained the School Leaving Certificate and produced the same before the management, but the same was ignored and he was asked to retire w.e.f. 1st September 2000 at the age of 47 years. The above stand of the workman was answered by the management in Para. 8 of the written statement. In Para. 8, it is specifically averred by the management that the same is a misrepresentation of facts. In the said Para. the management has touched the other aspects of the pleading of the workman, but with regard to his knowledge which the workman has claimed that he could gather during the last week of June, 2000 and then took up follow up action there is no challenge at all. In this evidence the workman has also stated about this fact in Para. 4 of his Examination-in-Chief. During the course of cross-examination no importance was given to this aspect. M.W. 2 in cross-examination Para. 4 has stated that there is no time limit prescribed in the standing order for presenting an application to correct the date of birth. It is not the case of the management that the employees working under it have access to the service records and that can be verified by them as and when desired. In view of the above background the plea taken by the workman that he had no access to the service records being maintained by the management sounds probable. He has specifically said it in his pleading and also in his evidence in Court, but this important aspect is not duly challenged or shaken during the course of cross-examination. So the plea that he was ignored about the entry of his age in the service record during his service career and that he could know about it in the last week of June, 2000 sounds probable. If by then this position was holding the field, then the representation of the workman to correct his date of birth after obtaining a transfer certificate can not be termed as a belated attempt. So the settled position of law that in absence of probable explanation the application presented belatedly for correction of date of birth is to be rejected can not be applicable in case of the present workman. Rather, he has produced materials to suffice his

stand and the explanation furnished in this regard is also satisfactory. In my view there are materials to conclude that up till the last week of June, 2000 the workman was ignorant about the wrong entry of his age in Ext. 1 and after knowing it, he moved very fast to rectify the mistake, but the management did not co-operate with him.

10. Admittedly in the body of Ext. 1 the date of birth of the workman is not mentioned. The column available in respect of this aspect is left blank. No reasonable explanation is furnished as to why it was left blank. Admittedly M. W. 1 has filled up the body of Ext. 1. It is his duty to explain under what circumstances the date of birth column was left blank. But he has stated in his evidence in Court that the workman disclosed his age as 35 and he reflected the name in the column available in the body of Ext. 1. Admittedly the workman is not aware of English language and Ext. 1 is an application written in English language. The date column is also printed in that language. In the body of the same the employment registration number of the workman is mentioned. During the course of trial, the registration certificate was also not produced from the side of the management. In turn, the workman has filed Exts. A and B to substantiate his cause. Ext. B is a letter issued by the Assistant Provident Fund Commissioner, Rourkela pertaining to the settlement of his (workman) pension under Employees Pension Scheme, 1995. On perusal of the above referred letter it is forthcoming that the previous employer of the workman had presented his date of birth as 1st September 1952, but subsequently in the claim application 11th October 2000 the present management described his date of birth 1st September 1942. This indicates that prior to joining the present management, the workman had described his age as 1st September 1942 which is congenial to conclude that at the time of his entry under the management, he was 25 years old. So there is no reason that at the time of filling up the column of Ext. 1, he would have stated that he was 35 years old. No good ground is shown from the side of the management as to why the workman will inform falsehood at the time of his entry under the management pertaining to his age. So definitely there is communication gap in between the workman and M. W. 1 at the time of filling up of the column of Ext. 1. Because of the above report lapses there is no reason to punish the workman to the extent as done by the management. Furthermore Ext. A indicates his year of birth including the year of birth of his parents. The year of birth of his mother is shown 1935. In such situation it is hard to fathom that the workman was born on 1st September 1942 as by then the mother would have been hardly 7 years old. So from the documents and the oral evidence as discussed above it is congenial to conclude that the date of birth of the workman is not 1st September 1942, but his age birth is 1952.

11. During course of argument the learned counsel for the management has given emphasis to the Adult Register. M. W. 2 has proved this register on behalf of the management. In his evidence, he has frankly admitted that the particulars mentioned in the Adult Register are collected from the employment application and appointment order, if this is true then the plea of the workman that the Adult Register is of no value sounds probable. It is his specific case that in the body of Ext. 1 the wrong age of birth is mentioned and when it was borrowed to the Adult Register the same situation prevailed in it, as a result, entries of the Adult Register is of no greater importance to support the case of the management. Further according to M. W. 2, the particulars mentioned in the Adult Register were entered by M. W. 1. But M. W.

1 is silent about this aspect. So the Adult Register is not a good document to support the cause of the management. Now coming to the medical certificate issued by the Doctor, it is forthcoming that the medical examination was not conducted to ascertain the approximate age of the workman, but it is a certificate to determine the fitness of the workman for his entry in service.

So even if the workman has signed near the age column of Ext. 2 there is no reason to give importance to it while determining the age of the workman. Rather a cloud of doubt arises in the mind of the Court as to why the signature of the workman was taken in the body of Ext. 2 at a place which is not meant for obtaining his signature. There is every reason to smell foul in the transaction.

12. As it appears, M. W. 1 has given a good description in his examination-in-chief pertaining to the workman. In cross-examination, he has stated that he can not assign any special reasons as to why he has remembered the particulars supplied by the present workman when he was examined by the Doctor. No good ground is shown as to why M.W. 1 is over interested for the Company. This witness further states that up till his retirement (M. W. 1) retired in the year 1998) there was no communication with the workman asking him to justify that he was 35 years old at the time of his joining under the management. He has also admitted in cross-examination Para. 15 that the workman was not having access to the records of the Company being maintained by the Personal Department. So the evidence noticed by the management is not up to the mark and rather from the oral and documentary evidence presented by the workman the plea taken by him sounds probable. The submission of the learned counsel for the management that the date of birth recorded in the identity card can not be treated as authenticated that the date of birth shown in the letter issued by the Regional Provident Fund Commissioner is not admissible are of no greater hearing to determine the crux of this case as in addition to the documentary evidence as discussed above, the workman has adduced satisfactory oral evidence and his pleading in this regard is not also seriously challenged from the side of the management. So in the summary proceeding like the present one what more evidence is required to substantiate the plea of the workman. To sum up, I am satisfied that the entry in Ext. 1 pertaining to the age of the workman is wrong and by then he was 25 years old and accordingly the order of superannuation with effect from 1st September 2000 is illegal.

13. It may not be out of place to mention here that the management forcibly retired the workman with effect from the 1st September 2000. If he was 35 years old at the time of his entry in service, then there is no reason to ask him to go in the month of September. They should have at least asked him to retire in the month of December. So in no way the action of the management is justified and there is no reason to turn down the request of the workman to correct his date of birth. As such there is every reason to answer this issue in support of the workman.

14. Issue No. (ii). - I have already answered issue No. i in support of the workman. So at the time of his retirement he was not 58 years old. In the body of Ext. 4 there is a clear cut mention that the workman shall retire on attaining the age of 58 years. So the action of the

management in retiring him with effect from 1st September 2000 is not justified. As per the age calculation of the workman described *supra*, he should have retired in 2010. The management by virtue of its illegal action debarred the workman from furthering his service for the period of one decade. Such a long period is definitely valuable while considering the career of the workman. In the premises, I am of opinion that the workman should be absorbed in his service with immediate effect. So far his back wages are concerned it is limited to 40% of the calculation as because during the said period, he has not rendered any service under the management. But it is hard to say that the theory of no work no pay will apply in case of the workman as because due to the wrong decision of the management, he has suffered a long. After weighing the entire situation the back wages of the workman is reduced to the extent as mentioned above. The management is directed to reinstate him in service from 1st May 2007. While calculating his arrears salary the date from which his retirement was affected i.e. 1st September 2000 till the end of the coming month i.e. 30th April 2007 be computed and the proportionate wages as stipulated above be given to the workman. The above issue is answered accordingly. Hence the following Award.

AWARD

The reference is answered on contest in support of the workman and against the management. It is held that the demand for correction of the age/date of birth of the workman Shri Gokul Das, Ex-Maintenance Attendant, Kiln Maintenance Department, Refractories Works of M/s O. C. L. India Ltd., Rajgangpur is legal and justified and the action of the management in whimsically retiring him with effect from 1st September 2000 is illegal and wrong. His age of birth is 1952 and his date of retirement should be December of 2010. The management is directed to reinstate the workman in service from 1st May 2007. While calculating his arrears salary the date from which his retirement was affected i.e. 1st September 2000 till the end of this month i.e. 30th April 2007 be computed and the proportionate wages as stipulated above be given to the workman within two months hence.

Dictated and corrected by me.

P. K. MAHAPATRO
4-4-2007
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRO
4-4-2007
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under Secretary to Government